

November 7, 2016

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No. 15-20040

LESHOUN DEANDRE BYRD,

Defendant.

/

PLEA HEARING

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

NOVEMBER 7, 2016

APPEARANCES:

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P R O C E E D I N G S

THE CASE MANAGER: United States of America vs Leshoun Byrd, case number 15-20040. Counsel, please put your appearances on the record.

MR. GILMER-HILL: Good morning, your Honor. Carl Gilmer-Hill with the U.S. Attorney's Office appearing on behalf of the United States.

THE COURT: Thank you, very much.

MR. FISHMAN: Good morning, Judge. Steve Fishman on behalf of Mr. Byrd.

THE COURT: Thank you, very much, Mr. Fishman. And that's you, Mr. Byrd?

THE DEFENDANT: Correct.

THE COURT: Well, welcome. Today is the date and time that was set aside for a change of plea hearing in your case, United States of America vs Leshoun DeAndre Byrd. The first thing I'm going to do, Mr. Byrd, is go over the purpose of the hearing and how it will be conducted. If at any time you have a question or there's something that you'd like to say, you have the opportunity to be heard today.

In light of the fact that you have a lawyer with you, I suggest that you first turn to your lawyer and ask your lawyer whether that would be an appropriate question to ask me or Mr. Gilmer-Hill. But do you understand you can speak up today?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Okay. I'd like to begin by swearing you
3 in. So please stand and raise your right hand. Do you
4 solemnly swear or affirm to tell the truth, the whole truth,
5 and nothing but the truth in the matter here pending?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Okay. Please be seated. Next, I'm going
8 to ask you some questions to determine whether you're ready to
9 participate in the hearing today. And I'll ask you questions
10 about the facts of the crime that you're alleged to have
11 committed and your decision regarding whether to change your
12 plea from not guilty or no contest to either guilty or
13 whatever it may be.

14 It's important that you tell the truth. If you say
15 something here under oath that you know is not true, you could
16 be charged with committing perjury, another way of saying
17 lying under oath. If you intentionally lie under oath, the
18 things you say can be used against you in that criminal
19 prosecution. But also separately from that, I might not give
20 you credit that I would ordinarily give to someone who
21 truthfully pleads guilty. And it could have an impact on your
22 sentence, which could be higher. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Okay. So I'm going to begin with the
25 background questions and ask that you listen. There's not too

1 many of them. First of all, what is your name?

2 THE DEFENDANT: Leshoun DeAndre Byrd.

3 THE COURT: And how old are you, Mr. Byrd?

4 THE DEFENDANT: I'm 37.

5 THE COURT: Okay. And how far did you go in school?

6 THE DEFENDANT: High school.

7 THE COURT: Okay. And I believe I know the answer to
8 this, but it's still an important question. Do you read and
9 write English?

10 THE DEFENDANT: Yes.

11 THE COURT: And I had every reason to believe that
12 you do. But the reason I ask you is I want to know whether
13 you could read and understand the legal documents that have
14 been a part of this case, the indictment and the -- if you've
15 seen a proposed Rule 11 plea agreement.

16 THE DEFENDANT: Yes.

17 THE COURT: Okay.

18 MR. FISHMAN: Judge, there is no Rule 11 in this case
19 though.

20 THE COURT: Okay.

21 MR. GILMER-HILL: Well, there was one. It was
22 rejected.

23 THE COURT: Was there an offer of a Rule 11?

24 MR. FISHMAN: There was.

25 THE COURT: And did your client see it?

1 MR. FISHMAN: We reviewed it. I think I sent it. I
2 may have sent it to him. I don't know. But I know we
3 reviewed it.

4 THE COURT: Okay. I just want to know whether
5 anything he's read in this case, whether he could understand
6 it. Okay. So there won't be a Rule 11. I think I was just
7 getting that drift. So I'm going to move over to that.

8 Are you under the effects of any drugs, medication,
9 or alcohol at this time, Mr. Byrd?

10 THE DEFENDANT: No.

11 THE COURT: Okay. And are you being treated by any
12 medical or mental health professional?

13 THE DEFENDANT: No, I'm not.

14 THE COURT: Okay. And do you think you're thinking
15 clearly today?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. And are you ready to proceed with
18 the hearing?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay. Mr. Fishman, are you aware of any
21 negative information concerning your client's competence to
22 proceed?

23 MR. FISHMAN: None.

24 THE COURT: And Mr. Gilmer-Hill, are you aware of any
25 of that type of information regarding Mr. Byrd?

1 MR. GILMER-HILL: No, Your Honor.

2 THE COURT: Okay. Well, based upon your own
3 statements, Mr. Byrd, those of your lawyer and Mr.
4 Gilmer-Hill, I find that you are competent to offer a plea in
5 this case today and we will proceed.

6 Do you understand that you have a constitutional
7 right to remain silent and not incriminate yourself?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: And do I understand correctly that you
10 wish to waive or give up that right for the purpose of
11 pleading guilty in this case?

12 THE DEFENDANT: Correct.

13 THE COURT: Okay. And again, I asked you this
14 earlier, but did you receive a copy of the indictment, which
15 is the charges pending against you?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: You have a right for me to read that to
18 you in court today. Would you like me to do that?

19 THE DEFENDANT: No.

20 THE COURT: Okay. You are charged in this indictment
21 -- let me just get it out -- with a violation in Count 1 with
22 conspiracy to possess with intent to distribute and distribute
23 a controlled substance. And the statutory maximum -- so that
24 the most -- the longest period of incarceration you could face
25 is up to life in prison. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: And the minimum is ten years.

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand that the maximum
5 fine is 10 million?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. And that you could also face five
8 or more years of supervised release?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. In Count 2, you're charged with
11 possession with intent to distribute the controlled substance,
12 aiding and abetting. Count 3, conspiracy to launder monetary
13 instruments. And I don't have the statutory maximums for
14 these.

15 MR. GILMER-HILL: Actually, your Honor --

16 THE COURT: Ordinarily I follow the plea agreement,
17 but I don't have a plea agreement.

18 MR. GILMER-HILL: Actually, your Honor, I believe
19 that the Court's been presented with three pages that
20 summarize some of those relevant points, including the
21 penalties.

22 THE COURT: Okay. Thank you. I see I have. Okay.
23 Counts 1 and 3, I think as I already said, you would face up
24 to life, but a minimum of ten years. Count 2 though is not on
25 here because --

1 MR. GILMER-HILL: Oh, I see.

2 THE COURT: This is for the plea agreement, which
3 apparently was to two counts.

4 MR. GILMER-HILL: I'm happy to state that, your
5 Honor.

6 THE COURT: Okay. Can you state the maximum penalty
7 for Count 2, which is the possession with intent to
8 distribute?

9 MR. GILMER-HILL: And I apologize, your Honor.
10 Actually for Counts 1 and 2, being the conspiracy to possess
11 with intent to distribute controlled substance, specifically a
12 thousand kilograms or more of marijuana, as well as the
13 substantive possession with intent to distribute charged in
14 Count 2, for each of those two counts, the maximum penalties
15 are life imprisonment with a mandatory minimum penalty of ten
16 years and/or a \$10 million fine.

17 It's as to Count 3, the conspiracy to launder
18 monetary instruments, that Mr. Byrd faces a 20-year maximum
19 penalty and/or either a \$500,000 fine or twice the value of
20 the property that was laundered.

21 THE COURT: And are there any other counts?

22 MR. GILMER-HILL: Just those three counts, your
23 Honor. At this point, perhaps just so the record's clear,
24 this plea is not pursuant to a traditional plea agreement or
25 any plea agreement.

1 THE COURT: Okay.

2 MR. GILMER-HILL: But for clarity of the record as to
3 what I anticipate to happen and what I believe Mr. Fishman may
4 anticipate happening, it's my understanding that Mr. Byrd will
5 be pleading guilty to Counts 1 and 3 without a Rule 11 plea
6 agreement. Consistent with the prior communications from Mr.
7 Fishman to the Court and the notice that he filed, I believe
8 Mr. Byrd understands that he could proceed to trial on
9 relation to any counts that he does not plead guilty to.

10 THE COURT: I'm sorry. What was that? I was just
11 reading.

12 MR. GILMER-HILL: Consistent with the e-mail
13 communications and the notice that Mr. Fishman had previously
14 filed, Mr. Fishman and Mr. Byrd are aware that by pleading
15 guilty to just some counts but not others, the Government
16 could proceed to trial on the remaining counts if the
17 Government elects to do so.

18 THE COURT: Okay.

19 MR. GILMER-HILL: I have advised -- I have relayed to
20 Mr. Fishman that if Mr. Byrd pleads to both Count 1 and Count
21 3, each of the conspiracy counts, most likely the Government
22 will dismiss Count 2. But it's my understanding that Mr. Byrd
23 is not moving forward based upon a commitment as to that.
24 Just that we have relayed the fact that with each of those
25 conspiracy convictions that the Government wouldn't see a

1 point on -- most likely not see a point proceeding on just the
2 substantive count of Count 2.

3 THE COURT: Okay. Let me do two things. First of
4 all, I just want to make sure that Mr. Byrd heard the portion
5 about the maximum penalties you could face if found guilty or
6 pleading guilty on all of the counts on the indictment.

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. And also forfeiture can be
9 ordered. There's a forfeiture count in the indictment. But
10 let me ask you, Mr. Fishman, I received document 105 on
11 October 26th that says your client intends to plead guilty to
12 Count 1. Is he now pleading guilty to 1 and --

13 MR. FISHMAN: Right.

14 THE COURT: What is he pleading?

15 MR. FISHMAN: The negotiations over Rule 11 agreement
16 were fruitless.

17 THE COURT: Okay.

18 MR. FISHMAN: So I filed that notice -- if you say it
19 was the 26th, I can't remember. But that's the date that's on
20 there. That must have been the day I did it. Notifying you
21 and the Government he was going to plead guilty to Count 1.
22 It was my hope at that time that that would be sufficient.
23 But I've had further conversations with people from the
24 Government, I understand in the interest of symmetry because
25 of what other people have plead to, they're insisting on a

1 plea to Count 3 and Mr. Byrd is going to plead to Count 3.

2 It's my understanding, based on some conversations I
3 had yesterday, that Count 2 is going to be dismissed when you
4 sentence him on Counts 1 and 3. But if it's up in the air,
5 then it's up in the air. That doesn't change our decision on
6 what we're going to do. I can't imagine why the Government,
7 the Court, or anybody would be interested in trying one
8 possession with intent to deliver when the man's going to jail
9 for ten years on a weak case.

10 THE COURT: Okay. Let me just say this in general,
11 Mr. Byrd. In the federal system, judges are not permitted to
12 get involved in plea negotiations. In state court, they can
13 get involved and say, hey, Mr. Gilmer-Hill, what about Count
14 2? And can go get into those sorts of things. I'm not
15 permitted to do that here. That has to take place entirely
16 between the lawyer for the Government and your lawyer.

17 So I can't comment on whether Count 2 should or
18 shouldn't proceed. That's entirely between those of you
19 sitting out there and not here. So there are good reasons for
20 that, so the judges aren't pressuring people to plead guilty
21 and those sorts of things.

22 So I heard what Mr. Gilmer-Hill said just as you did,
23 as it seemed unlikely that Count 2 would proceed but still
24 could and those sorts of things. So I want to make sure you
25 heard that as well.

1 THE DEFENDANT: Yes.

2 THE COURT: Mr. Fishman?

3 MR. FISHMAN: No. He understands all of that and he
4 also knows the difference between state court and federal
5 court. And if we had the right to waive the problem that
6 doesn't let judges get involved in it, we'd waive it. But we
7 know we can't. Here we are.

8 THE COURT: Okay. Well, Mr. Gilmer-Hill, are you
9 satisfied that Mr. Byrd knows what's going on here? Anything
10 further that you wish to say to clarify?

11 MR. GILMER-HILL: With Mr. Fishman's representation,
12 I'm quite confident that there have been plenty of discussions
13 and Mr. Byrd does fully understand how things are going to
14 proceed. As the Court, of course, I'm sure knows, the reason
15 I clarify the record is because Rule 11 would require the
16 Court to be fully apprised if there were any sort of even
17 unwritten agreement as to what was going to proceed.

18 THE COURT: Okay.

19 MR. GILMER-HILL: That's why I wanted to make sure
20 there was simply a clear record.

21 THE COURT: Thank you. Thank you, very much. Mr.
22 Byrd, this may seem repetitive, but I want to go back to
23 something, which is that you have a right to have -- this is
24 obviously a serious felony charge. You have a right to have
25 lawyer represent you during all stages of the proceeding.

1 I see you have Mr. Fishman here in court with you.
2 And I want to make sure you understand that if you can't
3 afford a lawyer at any time during the process, the Court will
4 appoint one to serve at the public's expense. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. And have you discussed this case
8 completely with your lawyer?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: And are you confident that you understood
11 his advice?

12 THE DEFENDANT: Yes.

13 THE COURT: And having said that, the decision to
14 plead guilty still has to be your own decision and not your
15 lawyer's decision. Do you understand that as well?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. And I understand from what has
18 been filed and what's been discussed here that you've
19 expressed the decision to plead guilty without the Rule 11
20 plea agreement. Is that the case as well?

21 THE DEFENDANT: Yes.

22 THE COURT: And were you either shown a plea
23 agreement or did you discuss a plea agreement that the
24 Government offered?

25 THE DEFENDANT: We discussed.

1 THE COURT: And you decided to reject it?

2 THE DEFENDANT: That's correct, yes.

3 THE COURT: Okay. And Mr. Gilmer-Hill, that's your
4 understanding as well? You provided proposed plea agreements?

5 MR. GILMER-HILL: That is correct, your Honor.

6 THE COURT: Okay. Mr. Byrd, just one other question
7 regarding your lawyer. Are you satisfied with your lawyer's
8 work on this case?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: And I have no reason to doubt that. But
11 it's important for the integrity of any criminal proceeding to
12 know that the defendant has had effective assistance of
13 counsel. Has anyone tried to force you or threaten you in any
14 way to get you to plead guilty?

15 THE DEFENDANT: No.

16 THE COURT: And has anybody done anything you think
17 is improper, illegal, unethical to get you to plead guilty?

18 THE DEFENDANT: No.

19 THE COURT: Okay. Are there any promises of any kind
20 that have been made to you about to get you to plead guilty?

21 THE DEFENDANT: No.

22 THE COURT: Okay. Is this, in fact, your own
23 decision then?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. And is this decision because

1 you're actually guilty of the two crimes you intend to plead
2 guilty to?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Now, do you understand that the
5 crime you're pleading or crimes you're pleading guilty to are
6 felony offenses, and if your plea is accepted you'll be
7 adjudged guilty of those offenses and that such adjudication
8 can deprive you of the right to vote?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: The right to hold public office?

11 THE DEFENDANT: Yes.

12 THE COURT: And the right to serve on a jury?

13 THE DEFENDANT: Yes.

14 THE COURT: Also under federal law, once you've been
15 adjudicated guilty of a felony, you're prohibited from
16 possessing a firearm or ammunition of any sort. Do you
17 understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. And I say this to everybody who's
20 sitting where you're sitting now. It does not matter what
21 kind of case it is. If it's a felony case, I stop right here
22 and I repeat that the fastest way back into this courtroom or
23 one like it is to serve your time in custody, or whatever the
24 penalty might be, and possess a firearm or ammunition. So I
25 just want to remind you, again, that whatever the reason could

1 possibly be, it is prohibited.

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Mr. Gilmer-Hill?

6 MR. GILMER-HILL: Your Honor, if I might just make a
7 point for the record as to this. At the time of his arrest,
8 firearms were seized from Mr. Byrd. I've discussed with Mr.
9 Fishman the fact that the Government had seized those
10 firearms. I believe there will be further discussions between
11 our office and Mr. Fishman as to whether the firearms will
12 simply be forfeited by Mr. Byrd or whether he will transfer
13 those firearms. I just want to make sure that that was part
14 of the record while you were addressing the firearm portion.

15 THE COURT: Thank you.

16 MR. FISHMAN: Just so the Court knows, it's true and
17 he's going to forfeit and we don't really care about the guns.
18 But he had a CCW permit at the time. It wasn't like he was
19 walking around --

20 THE COURT: Okay. But after he leaves here, he will
21 be adjudicated --

22 MR. FISHMAN: The guns are long since gone. We're
23 going to forfeit them. I'll get with Ms. Beck and we'll take
24 care of it. But I just want the Court to know it's not like
25 he was toting a pistol around without a license.

1 THE COURT: I didn't have any preconceived idea of
2 what was going on. But I just care about Mr. Byrd. I've only
3 met him about 20 minutes ago. But I don't want him back on
4 another case after this case concludes or after this hearing
5 concludes. I don't want him to be in possession of a firearm
6 that would potentially jeopardize his liberty.

7 MR. FISHMAN: Agreed.

8 THE COURT: Now, Mr. Byrd, you have a number of
9 constitutional rights that you're giving up by pleading
10 guilty. And I'm going to describe those rights in general
11 terms and ask if you understand that you're giving them up.

12 You have a right to plead not guilty to any offense
13 that's charged against you and to assist in that plea. You
14 have a right to a trial by a jury. And at that trial, you
15 would be presumed to be innocent and the Government would have
16 to prove you're guilty beyond a reasonable doubt. Do you
17 understand those rights?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: And do you wish to give them up?

20 THE DEFENDANT: Yes.

21 THE COURT: You have a right to the assistance of
22 counsel for your defense, which we discussed earlier,
23 appointed by the Court, if necessary, at the trial and every
24 other stage of the proceeding and the right to see and hear
25 all of the witnesses and have them cross-examined in your

1 defense. And you have the right to decline to testify unless
2 you voluntarily decided to do so in your own defense. And you
3 have the right to compel the attendance of witnesses to
4 testify in your defense. Do you understand those rights?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: And do you wish to give them up?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Do you understand that if you
9 decided not to testify or put on any evidence, the fact that
10 you did not testify or put on evidence could not be used
11 against you?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. And do you understand that by
14 entering a plea of guilty, if your plea is accepted, there
15 will be no trial and you will have waived or given up your
16 right to a trial as well as the other rights associated with
17 the trial?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Mr. Byrd, are you a U.S. citizen?

20 THE DEFENDANT: Yes, I am.

21 THE COURT: Okay. There's various things that happen
22 if you're not a citizen. So I don't have to go into that.

23 Mr. Gilmer-Hill, could you place the nature of the
24 offense that Mr. Byrd is pleading guilty to and the elements
25 the Government would have to prove if the case were to go to

1 trial?

2 MR. GILMER-HILL: Certainly, your Honor.

3 THE COURT: Thank you.

4 MR. GILMER-HILL: As mentioned, it's my understanding
5 that Mr. Byrd will be pleading guilty to conspiracy to possess
6 with intent to distribute controlled substances as charged in
7 Count 1 of the indictment. The elements for that offense are
8 that the defendant knowingly and intentionally entered into an
9 agreement with others and that the purpose of the agreement
10 was to possess with the intent to distribute a controlled
11 substance, specifically 1,000 kilograms or more of a substance
12 containing a detectable amount of marijuana.

13 It's my understanding that Mr. Byrd also intends to
14 plead guilty to Count 3 of the indictment, which charges
15 conspiracy to launder monetary instruments. And the elements
16 for that offense are that the defendant knowingly and
17 intentionally entered into an agreement with others and that
18 the purpose of the agreement was to commit an offense in
19 violation of Title 18 United States Code, Section 1956 or
20 1957.

21 Specifically to conduct or cause others to conduct a
22 financial transaction as defined within the statutes by title
23 18 United States Code 1956, Subsection (c)(4), involving cash,
24 vehicles, real property, or any property derived from drug
25 trafficking proceeds. And to do so while knowing the property

1 is the proceeds of at least some form of unlawful activity and
2 either intending to promote drug trafficking or knowing that
3 the financial transaction was designed in whole or in part to
4 conceal or disguise the nature, source, ownership, or control
5 of these proceeds or knowing that the financial transaction
6 was designed in whole or in part to avoid the transaction
7 reporting requirement.

8 This offense can also be committed by virtue of the
9 defendant knowingly and intentionally entering into an
10 agreement with others for the purpose of committing an offense
11 in violation of those same statutes. Specifically doing so to
12 engage in or cause others to engage in a monetary transaction
13 as defined in Title 18 United States Code, Section 1957, with
14 a financial institution such as a bank, credit union, money
15 transmitter, real estate company, or car dealership utilizing
16 drug trafficking proceeds in an amount greater than \$10,000.

17 I guess if the Court likes, I can speak more simply
18 to the elements. There are multiple ways by which this
19 offense could be committed.

20 THE COURT: Yeah.

21 MR. GILMER-HILL: Those that I just listed before or
22 this manner of engaging in a financial -- excuse me, a
23 monetary transaction with a financial institution in an amount
24 greater than \$10,000 while knowing that the proceeds are
25 derived from at least some form of unlawful activity.

1 THE COURT: Okay. Well, thank you, very much. I
2 know that this is a rather complex set of elements. Mr.
3 Fishman, do you agree that those are the elements the
4 Government would have to prove if your client went to trial?

5 MR. FISHMAN: Agreed.

6 THE COURT: Okay. Mr. Byrd, I want to move on to
7 another portion of the hearing. If I sentence you -- and in
8 this case there's a mandatory minimum of ten years -- to a
9 period of custody, I will also sentence you to what we call
10 supervised release. I don't know if you were in the courtroom
11 a moment ago when we had a supervised release violation
12 hearing.

13 THE DEFENDANT: Yes.

14 THE COURT: If you violate a condition of
15 supervision, I can send you back to prison or into custody for
16 addition time even though you completed your sentence on this
17 case that you're admitting to today. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. I can also order you to pay
20 restitution to any victim of your conduct. There's
21 forfeiture, but I don't know if there's restitution in this
22 case, Mr. Gilmer-Hill.

23 MR. GILMER-HILL: I don't think the restitution --
24 excuse me. I don't think restitution is an issue in this
25 matter.

1 THE COURT: Okay. Mr. Byrd, any sentence you receive
2 will be governed by federal law, including provisions of the
3 federal sentencing guidelines. Under the law, I will make the
4 final decision concerning your sentence aside from the
5 mandatory minimum, which congress has set. I'll be guided in
6 part by your sentencing guideline score which combines the
7 seriousness of the offense you're charged with or the offenses
8 along with your own criminal history which I know nothing
9 about sitting here today. And it results in a range of
10 sentences.

11 My decision about your sentence may be the same as
12 the Government has estimated or your lawyer has estimated, but
13 it could be different. It could be higher or it could be
14 lower than they have estimated. Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: And just because the Government makes a
17 certain recommendation such as that your sentence be at a
18 certain level, that you receive credit for something, or have
19 an enhancement for another reason does not require me to
20 accept that recommendation. Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Okay. Mr. Fishman, are you confident
23 that your client fully understands this?

24 MR. FISHMAN: That he understands the consequence of
25 his plea?

1 THE COURT: Yes.

2 MR. FISHMAN: Absolutely.

3 THE COURT: Okay. And do you believe that his
4 decision to plead guilty is in your client's best interest?

5 MR. FISHMAN: I think it's in his best interest.
6 It's also his only option, as far as I'm concerned.

7 THE COURT: Okay. All right. Well, Mr. Byrd, having
8 gone over your rights and your decision to plead guilty as
9 well as the charges that the Government is bringing and the
10 elements they would have to prove if you were to go to trial,
11 to the charges contained in Count 1 and Count 3 of the
12 indictment, which we have just discussed, how do you wish to
13 plead?

14 THE DEFENDANT: Guilty.

15 THE COURT: Okay. Now I'd like you to tell me in
16 your own words what you did that makes you guilty of these two
17 offenses.

18 MR. FISHMAN: Would the Court allow me to --

19 THE COURT: I want to start with Mr. Byrd saying what
20 he believes he did and then have you continue from there.
21 What I find, Mr. Fishman, just by way of explanation, is that
22 you have obviously talked a great deal and worked with your
23 client a great deal and if all I hear is yes, no, yes, no, I'm
24 not -- I need to be confident of what he's saying yes and no
25 to. I need to -- because what ultimately happens is we get to

1 the next case with someone.

2 We have no idea what they say that they have actually
3 done and we don't know whether we have predicate offenses in
4 concern kind of cases and things like that. So I want to hear
5 from your client's voice something about this conduct and then
6 you can take it from there.

7 MR. FISHMAN: I'm just going to tell you that I
8 haven't discussed that -- it didn't cross my mind that that
9 was going to happen. So I haven't talked to him about that.
10 Do you want me to just have a few minutes and tell him?

11 THE COURT: Yeah. That would be great.

12 (Pause In Proceedings)

13 MR. FISHMAN: Okay.

14 THE COURT: Okay. Mr. Byrd, what can you tell me
15 about what you did that makes you believe you're guilty of
16 these two offenses?

17 MR. FISHMAN: Should he do it one count at a time?

18 THE COURT: He can just get started. And then Mr.
19 Gilmer-Hill and you -- I'm going to look at these elements and
20 we'll see if he's met them.

21 MR. FISHMAN: Okay.

22 THE DEFENDANT: In the beginning of 2009, I possessed
23 an amount of marijuana which was what they described over
24 2,000 --

25 MADAM COURT REPORTER: Can you keep your voice up,

1 please?

2 THE COURT: We need to be able to hear so that the
3 record can be complete.

4 THE DEFENDANT: In the beginning of 2009, I possessed
5 some marijuana entering an agreement with a couple of people,
6 so.

7 THE COURT: Okay. All right. And was it 1,000
8 kilograms or more?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. And was there an agreement with
11 those other people about what you would do with the marijuana?

12 THE DEFENDANT: Sell it.

13 THE COURT: Yeah. Mr. Fishman, do you want to -- and
14 I appreciate you speaking about that. Do you want to go ahead
15 and ask your client some more questions to make sure all of
16 the elements have been met?

17 MR. FISHMAN: Yes. Mr. Byrd, in that time period
18 beginning in the beginning of 2009 and going through the time
19 of the arrest of one of the Co-defendants, did you agree with
20 other people to possess marijuana and then eventually sell it?

21 THE DEFENDANT: Yes.

22 MR. FISHMAN: And you're aware that the conspiracy is
23 an agreement to commit a crime, criminal conspiracy is an
24 agreement to commit a crime?

25 THE DEFENDANT: Yes.

1 MR. FISHMAN: And you know that at least in the
2 federal system, possession with intent to distribute or
3 distributing marijuana is still a crime. You know that?

4 THE DEFENDANT: Yes.

5 MR. FISHMAN: And you're confident, are you not, that
6 the quantity involved was in excess of 2,200 pounds which
7 would be more than 1,000 kilograms, correct?

8 THE DEFENDANT: Yes.

9 MR. FISHMAN: I think that covers all the elements
10 personally.

11 THE COURT: Okay. Mr. Gilmer-Hill?

12 MR. GILMER-HILL: I would ask simply to speak as to
13 venue, that some portion of the conduct occurred in the
14 Eastern District of Michigan.

15 MR. FISHMAN: I can ask that. Mr. Byrd, in the
16 middle of this agreement and conspiring, did some of it happen
17 here in the Eastern District of Michigan? In other words,
18 were funds either sent from here or was the weed sold here?

19 THE DEFENDANT: Yes.

20 MR. GILMER-HILL: The Government's satisfied as to
21 Count 1, your Honor.

22 THE COURT: Okay.

23 MR. FISHMAN: I'm satisfied.

24 THE COURT: Okay. So am I.

25 MR. FISHMAN: Do you want him to address Count 3?

1 THE COURT: Yes, please.

2 THE DEFENDANT: The proceeds from the money --

3 THE COURT: The money that was derived from selling
4 the marijuana?

5 THE DEFENDANT: Yes. Was used to buy stuff.

6 THE COURT: Okay. What kind of stuff?

7 THE DEFENDANT: Clothes, jewelry.

8 THE COURT: Were cars and things like that involved?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. Mr. Fishman?

11 MR. FISHMAN: Mr. Byrd, as a result of the agreement
12 to sell the marijuana, did you make a certain amount of money?

13 THE DEFENDANT: Yes.

14 MR. FISHMAN: And did you conduct what we might call
15 financial transactions, like buying jewelry or buying a car or
16 spending money at the race track or anything else with the
17 money that you made illegally?

18 THE DEFENDANT: Yes.

19 MR. FISHMAN: And are you confident that you -- the
20 purchase of this and the things that were done with the money
21 amounted to more than \$10,000?

22 THE DEFENDANT: Yes.

23 MR. FISHMAN: And are you also confident that you
24 didn't tell -- if you bought jewelry, for instance, you didn't
25 go in and tell the jeweler that this was weed money or illegal

1 money, correct?

2 THE DEFENDANT: That's correct.

3 MR. FISHMAN: And the same thing applied to anything
4 else that you purchased? You didn't say, by the way, this is
5 made from the sell of marijuana, correct?

6 THE DEFENDANT: That's correct.

7 MR. FISHMAN: So you concealed it from other people,
8 right?

9 THE DEFENDANT: Yes.

10 MR. FISHMAN: Okay. I don't have anything further.

11 THE COURT: And did that also take place, some of
12 that, in the Eastern District of Michigan?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And the reason we ask that is
15 that's how it becomes appropriate for the case to be handled
16 here as opposed to somewhere else. Mr. Gilmer-Hill?

17 MR. GILMER-HILL: Your Honor, I guess given the
18 various elements, just for clarity, I would seek clarification
19 that at least a vehicle in excess of \$10,000 or valued in
20 excess of \$10,000 was among the items that were purchased with
21 the drug proceeds?

22 MR. FISHMAN: Did you buy a vehicle that was worth
23 more than 10 grand?

24 THE DEFENDANT: Yes.

25 MR. FISHMAN: Okay.

1 MR. GILMER-HILL: With the drug proceeds?

2 THE DEFENDANT: Yes.

3 MR. FISHMAN: With the proceeds from the sell of the
4 marijuana?

5 THE DEFENDANT: Yes.

6 MR. GILMER-HILL: Thank you, your Honor. The
7 Government's satisfied.

8 THE COURT: Okay. Mr. Fishman, are you satisfied
9 that there's a proper factual basis for this second -- or the
10 third count as well?

11 MR. FISHMAN: Yes.

12 THE COURT: And Mr. Gilmer-Hill already indicated
13 that he is. Well, I'm also satisfied. Mr. Byrd, I find that
14 your proposed guilty plea is supported by the facts that you
15 know what you're doing today and that you're acting
16 competently and voluntary in giving up your rights to a trial.
17 I'm prepared to accept your guilty plea to Counts 1 and 3.
18 Are you sure you'd like me to accept your plea?

19 THE DEFENDANT: Yes.

20 THE COURT: Therefore, it is the finding of the Court
21 in the case of the United States of America vs Leshoun Byrd
22 that Mr. Byrd is fully competent and capable of entering an
23 informed plea, that you are aware of the nature of the charges
24 and the consequences of your plea, and that your plea of
25 guilty is knowing and voluntary and supported by a factual

1 basis.

2 Your plea of guilty to Counts 1 and 3 is, therefore,
3 accepted. And you are now adjudged guilty of those two
4 offenses. Your case will be referred to the probation
5 department for the preparation of a presentence report.

6 You're required to cooperate with the probation
7 department consistent with the advice of your lawyer. And you
8 have a right to have your lawyer present with you when you're
9 interviewed by the probation department.

10 They will ask a great many questions about your
11 personal history and characteristics and all sorts of things
12 related to this case. They will compile a report that will be
13 provided to you and your lawyer and the Government. You'll
14 have an opportunity to make objections or corrections to it.
15 And it will then be presented to the Court.

16 Sentencing on this case will take place March 7th of
17 2017 at 1:00 PM in this courtroom. You're required to appear
18 at that date and time. And failure to appear would be
19 considered a violation of the conditions of your bond. And an
20 arrest warrant would be issued and your bond could be
21 cancelled. Failure to appear is also a separate offense that
22 could result in additional charges. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Okay. Mr. Gilmer-Hill, is there any
25 request from the Government regarding the bond status?

1 MR. GILMER-HILL: No, Your Honor. No objection to
2 Mr. Byrd remaining out on bond at this time.

3 THE COURT: Okay. All right. Well, that will
4 conclude our hearing. And I'll just remind you that you're
5 under the same terms and conditions for the bond as when you
6 were first placed on it.

7 THE DEFENDANT: Yes.

8 MR. GILMER-HILL: Actually, your Honor. I apologize
9 for the interruption.

10 THE COURT: Okay. No, go right ahead.

11 MR. GILMER-HILL: Your Honor, at this point in time,
12 the Government will make an oral motion to dismiss Count 2 as
13 to Mr. Byrd.

14 THE COURT: Oh, I see. Okay. Well, that is granted.
15 I assume there's no objection to dismissing Count 2?

16 MR. FISHMAN: No objection.

17 THE COURT: Okay. All right. So Count 2 is
18 dismissed. And we will next see you on March 7th, 2017 at
19 1:00 PM.

20 THE DEFENDANT: Okay.

21 MR. GILMER-HILL: Thank you, your Honor.

22 (Proceedings Concluded)

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November 7, 2016

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Jeseca C. Eddington, Federal Official Court Reporter, in and for the United States District Court Eastern District of Michigan, appointed pursuant to provisions of Title 28, United States Code, Section 753, do hereby certify the foregoing 32 pages are a true and correct transcript of the proceedings had in the matter of UNITED STATES OF AMERICA versus LESHOUN DEANDRE BYRD, Case No. 15-20040 held on November 7, 2016.

/s/ JESECA C. EDDINGTON

Jeseca C. Eddington, RDR, RMR, CRR, FCRR
Federal Official Court Reporter

2/9/2017

Date